

STATEMENT OF CONSIDERATION RELATING TO
907 KAR 20:001

Department for Medicaid Services
Amended After Comments

(1) A public hearing regarding 907 KAR 20:001 was not requested and; therefore, not held.

(2) The following individuals submitted written comments regarding 907 KAR 20:001:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Kathy Adams, Director of Public Policy	Children's Alliance
Teresa C. James, Commissioner	Department for Community Based Services (DCBS)

(3) The following individual from the promulgating agency responded to comments received regarding 907 KAR 20:001:

<u>Name and Title</u>	<u>Organization/Agency/Other Entity</u>
Lee Guice, Director	Department for Medicaid Services, Division of Policy and Operations
Marchetta Carmicle, Manager	Department for Medicaid Services, Division of Policy and Operations, Eligibility Policy Branch
Stuart Owen, Regulation Coordinator	Department for Medicaid Services

SUMMARY OF COMMENTS AND AGENCY'S RESPONSES

(1) Subject: Impact of Eligibility Changes on Children

(a) Comment: Teresa C. James, Commissioner of the Department for Community Based Services stated the following:

"DCBS is uncertain the need for 'family-related case' or 'family case' [Section 1(45)], which is based on deprivation." She also stated, "DCBS was of the understanding that the MAGI cases took their place."

(b) Response: The Department for Medicaid Services (DMS) is deleting the definition via an "amended after comments" administrative regulation.

(2) Subject: Clarification of Definitions

(a) Comment: Teresa C. James Commissioner of the Department for Community Based Services stated the following:

“DCBS recommends that DMS consider defining ‘medically needy’.”

(b) Response: Via an “amended after comments” administrative regulation, DMS is inserting a definition of medically needy. The definition states:

“Medically needy” is defined in 42 C.F.R. 435.4.”

(c) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 3 line 22 to page 4 line 4, Recommend the definition of ‘Caretaker Relative’ be re-written, as provided below, to clarify that the relationships enumerated in (b)1. to 12 are specific to the child. As written, it appears that the Caretaker Relative only has to have one of these relationship with any child, rather than the referred to in the current (a) 1. and 2. (21) ‘Caretaker Relative’ means an individual:

(a) who is the caregiver of a child under the age of nineteen (19) years; or

(b) on who tax return the child under the age of nineteen (19) years is listed as a dependent; and

(c) who has one of the following relationships to the child: doesn’t give relationship examples

(d) Response: DMS is revising the language in an “amended after comments” administrative regulation to read as follows:

“(21) “Caretaker relative” means:

(a) An individual:

1. Who is the caregiver of a child under the age of nineteen (19) years; or

2. On whose tax return the child under the age of nineteen (19) years is listed as a dependent; and

(b) **Who has one of the following relationships to the child[One (1) of the following]:**

1. A grandfather;

2. A grandmother;

3. a brother;

4. A sister;

5. An uncle;

6. An aunt;

7. A nephew;

8. A niece;

9. A first cousin;

10. A relative of the half-blood;

11. A preceding generation denoted by a prefix of:
 - a. Grand;
 - b. Great; or
 - c. Great-great; or
12. A stepfather, stepmother, stepbrother, or stepsister.”

(e) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 5 line 1 thru 12: The definition of ‘child’ is very confusing. The citation to 42 U.S.C. 1396a(l)(1)(D) in (24)(b) could not be found. Therefore, we are unable to determine which group of individuals are still considered ‘a child’ after they turn 18. Additionally, this definition of ‘child’ appears to conflict with the definitions of ‘child’ as provided by KRS. There is great concern, based upon the definition of ‘child’ set forth in this regulation, that foster children currently only eligible for Medicaid coverage until they turn 18, that become ‘former foster children’ will not again be eligible for Medicaid coverage under ACA and 907 KAR 10:075 until they turn 19. This would mean there is a year that a foster child, age 18 or over on extended commitment, or a former foster child that is age 18, would not be covered by Medicaid until they turn 19. Simply stated, it appears that there will be a year (when they are 18 years old) that a foster child or former foster child will not be covered by Medicaid.”

(f) Response: The age range is established in the Affordable Care Act. Foster children who are eighteen (18) but not yet nineteen (19) qualify for health insurance coverage through the Kentucky Children’s Health Insurance Premium (KCHIP) Program.

(g) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 6 Line 8 to 12: The definition of ‘dependent child’ (32) is very limited by the use of ‘a couple’s child’ and use of ‘spouse’ in (32)(a) and (b). Recommend the definition be broadened, if possible.”

(h) Response: DMS is revising the definition in an “amended after comments” administrative regulation as follows:

“(32) “Dependent child” means a natural~~[couple's]~~ child, including a child gained through adoption, who:

- (a) Lives with a parent in the community ~~[spouse]~~; and
- (b) Is claimed as a dependent by either parent~~[spouse]~~ under the Internal Revenue Service Code.”

(i) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 10 Line 12 to 18: Recommend that the definition (58) ‘Institutionalized’ and (59) ‘Institutionalized individual’ be more consistently defined. (59) does not allow an individual receiving hospice services to be defined as a ‘institutionalized individual’ yet hospice services are included in the definition of ‘institutionalized’.

(j) Response: Via an “amended after comments” administrative regulation, DMS is revising the definition of “institutionalized individual” to be consistent with the definition of “institutionalized.” The revised definition reads as follows:

“(59) "Institutionalized individual" means an individual with respect to whom payment is based on a level of care provided in a nursing facility and who is:

(a) An inpatient in:

1. A nursing facility;
2. An intermediate care facility for individuals with an intellectual disability; or
3. A medical institution; ~~[or]~~

(b) Receiving 1915(c) home and community based services; or

(c) Receiving hospice services.”

(k) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 12 line 5: Recommend the term ‘guardianship care’ be defined since this term has differing meaning across Cabinet programs.”

(l) Response: DMS does not understand the need to define the term.

(m) Comment: Kathy Adams, Directory of Public Policy for Children’s Alliance, stated the following:

“Page 12 line 11: Recommend (f) ‘deemed newborn’ be clarified, perhaps by adding a reference to the regulation that specifies what a ‘deemed newborn’ is.”

(n) Response: DMS is revising the language as follows in an “amended after comments” administrative regulation:

“(68) “Mandatory categorically needy eligibility groups” means:

- (a) Transitional medical assistance;
- (b) Extended Medicaid due to child or spousal support collections;
- (c) Children with Title IV-E adoption assistance, foster care, or guardianship care;
- (d) Qualified pregnant women and children;
- (e) Mandatory poverty level related pregnant women;
- (f) Mandatory poverty level related infants;
- (g) Mandatory poverty level related children aged one (1) to five (5) years;
- (h) Mandatory poverty level related children aged six (6) to eighteen (18) years;
- (i) Deemed newborns **in accordance with 42 C.F.R. 435.117;**.”

(o) Comment: Kathy Adams, Directory of Public Policy for Children's Alliance, stated the following:

"Suggest a definition for 'non-English' as used in 920 KAR 1:070 be added to 907 KAR 20:001."

(p) Response: DMS found no definition of "non-English" in 920 KAR 1:070 and does not understand the need to define the term.

(3) Subject: Suggested Grammatical Changes

(a) Comment: Kathy Adams, Director of Public Policy for Children's Alliance, stated the following:

"Page 4 line 7: Typo # 3. – Capitalize 'a' in 'A brother:
Page 6 Line 16: Recommend inserting the word 'Is' after (c) and before the word 'claimed' so that (c) reads, 'Is claimed as a dependent....."

(b) Response: The Legislative Research Commission (LRC) Regulations Compiler corrected the mistake via a technical amendment after the administrative regulation was filed with LRC.

(c) Comment: Kathy Adams, Director of Public Policy for Children's Alliance, stated the following:

"Page 11 line 12: The word 'and' is missing at the end of (a). Recommend the line read: '.....or underinsured women; and."

(d) Response: DMS is inserting "and" via an "amended after comments" administrative regulation.

(e) Comment: Kathy Adams, Director of Public Policy for Children's Alliance, stated the following:

"Page 12 line 5: Recommend that the word 'with' in (c) be clarified by using a more definitive term like 'receiving' or 'approved for'."

(f) Response: DMS is revising the language as follows in an "amended after comments" administrative regulation:

"(68) "Mandatory categorically needy eligibility groups" means:

(a) Transitional medical assistance;

(b) Extended Medicaid due to child or spousal support collections;

(c) Children **receiving or approved for**[with] Title IV-E adoption assistance, foster care, or guardianship care;"

(g) Comment: Kathy Adams, Director of Public Policy for Children's Alliance, stated the following:

"Page 12 line 13: Recommend 'in' in (k) be replaced with a more definitive term like 'living in' or 'residing in'".

(h) Response: DMS is revising the language in an "amended after comments" administrative regulation as follows:

"(k) Aged, blind, and disabled individuals residing in Social Security Act 209(b) states;".

(i) Comment: Kathy Adams, Director of Public Policy for Children's Alliance, stated the following:

"Page 12 line 16 and 17: Recommend wording be added to both (n) and (o) to clarify 'what' the group has been 'eligible' for."

(j) Response: DMS is revising the language in an "amended after comments" administrative regulation as follows:

"(n) Institutionalized individuals continuously eligible for Medicaid since 1973;

(o) Blind or disabled individuals eligible for Medicaid in 1973;".

(k) Comment: Kathy Adams, Director of Public Policy for Children's Alliance, stated the following:

"Page 13 line 23: Recommend the phrase 'in this administration regulation' be clarified to include a reference to the specific Section, etc. where the income standards are located in this regulation. If the income standards are not established in this regulation, then a citation to the appropriate regulation, section, etc., should be added."

(l) Response: The Legislative Research Commission Regulations Compiler corrected the reference – to refer to 907 KAR 20:020 – via a technical amendment. The language now reads as follows:

"(71) "Medicaid works individual" means an individual who:

(a) But for earning in excess of the income limit established under 42 U.S.C. 1396d(q)(2)(B), would be considered to be receiving supplemental security income;

(b) Is at least sixteen (16), but less than sixty-five (65), years of age;

(c) Is engaged in active employment verifiable with:

1. Paycheck stubs;

2. Tax returns;

3. 1099 forms; or

4. Proof of quarterly estimated tax;

(d) Meets the income standards established in 907 KAR 20:020;".

(m) Comment: Kathy Adams, Director of Public Policy for Children's Alliance, stated the following:

"Page 14 line 11: (a) as currently written does not appropriately as it ends in 'including blood'. Recommend (a) be re-written or words added after 'blood; so that it understandable."

(n) Response: DMS is revising the language in an "amended after comments" administrative regulation as follows:

"(76) "Medicare Part A" means federal health insurance that covers:

- (a) Inpatient hospital or skilled nursing facility services, including blood transfusions;
- (b) Hospice services; and
- (c) Home health services."

SUMMARY OF STATEMENT OF CONSIDERATION AND ACTION TAKEN BY PROMULGATING ADMINISTRATIVE BODY

The Department for Medicaid Services (DMS) has considered the comments received regarding 907 KAR 20:001 and is amending the administrative regulation as follows:

Page 4
Section 1(21)(b)
Line 4

After "(b)", insert the following:

Who has one of the following relationships to the child

Delete "One (1) of the following".

Page 6
Section 1(32)
Line 8

After "means a", insert "natural".

Delete "couple's".

Page 6
Section 1(32)(a)
Line 10

After "with", insert "a parent in".

After "community", delete "spouse".

Page 6
Section 1(32)(b)
Line 11

After “either”, insert “parent”.
Delete “spouse”.

Page 8

Section 1(45) and (46)

Lines 13, 14, and 15

After “(45)”, delete the definition and delete “(46)”.

Page 8

Sections 1(47), (48), (49), (50), and (51)

Lines 16, 18, 20, 21, and 23

Renumber these five (5) subsections by inserting “(46)”, “(47)”, “(48)”, “(49)”, and “(50)”, respectively, and by deleting “(47)”, “(48)”, “(49)”, “(50)”, and “(51)”, respectively.

Page 9

Sections 1(52), (53), (54), (55), and (56)

Lines 10, 13, 15, 18, and 20

Renumber these five (5) subsections by inserting “(51)”, “(52)”, “(53)”, “(54)”, and “(55)”, respectively, and by deleting “(52)”, “(53)”, “(54)”, “(55)”, and “(56)”, respectively.

Page 10

Sections 1(57), (58), and (59)

Lines 4, 8, and 12

Renumber these three (3) subsections by inserting “(56)”, “(57)”, and “(58)”, respectively, and by deleting “(57)”, “(58)”, and “(59)”, respectively.

Page 10

Sections 1(59)(a)3.

Line 17

After “institution;”, delete “or”.

Page 10

Sections 1(59)(b)

Line 18

After “services;”, insert the following:

;or

(c) Receiving hospice services

Page 10

Sections 1(60)

Line 19

Renumber this subsection by inserting “(59)” and by deleting “(60)”.

Page 11

Sections 1(61), (62), and (63)

Lines 3, 5, and 9

Reorder these three (3) subsections by inserting “(60)”, “(61)”, and “(62)”, respectively, and by deleting “(61)”, “(62)”, and “(63)”, respectively.

Page 11

Section 1(63)(a)

Line 12

After “women;”, insert “and”.

Page 11

Sections 1(64), (65), (66), and (67)

Lines 17, 19, 20, and 22

Reorder these four (4) subsections by inserting “(63)”, “(64)”, “(65)”, and “(66)”, respectively, and by deleting “(64)”, “(65)”, “(66)”, and “(67)”, respectively.

Page 12

Section 1(68)

Line 2

Reorder this subsection by inserting “(67)” and by deleting “(68)”.

Page 12

Section 1(68)(c)

Line 2

After “Children”, insert “receiving or approved for”.

Delete “with”.

Page 12

Section 1(68)(i)

Line 11

After “newborns”, insert “in accordance with 42 C.F.R. 435.117”.

Delete “with”.

Page 12

Section 1(68)(k)

Line 13

After “individuals”, insert “residing in”.

Page 12

Section 1(68)(n)

Line 16

After “eligible”, insert “for Medicaid”.

Page 12

Section 1(68)(o)

Line 17

After “eligible”, insert “for Medicaid”.

Page 13

Sections 1(69), (70), and (71)

Lines 11, 12, and 14

Renumber these three (3) subsections by inserting “(68)”, “(69)”, and “(70)”, respectively, and by deleting “(69)”, “(70)”, and “(71)”, respectively.

Page 13

Sections 1(72) and (73)

Lines 2 and 4

Renumber these two (2) subsections by inserting “(71)” and “(72)”, respectively, and by deleting “(72)” and “(73)”, respectively.

Page 14

Sections 1(73)

Line 5

After “907 KAR 3:130.”, insert a return and the following:

(73) “Medically needy” is defined in 42 C.F.R. 435.4.

Page 14

Sections 1(76)(a)

Line 11

After “blood”, insert “transfusions”.

Page 20

Section 1(106)

Line 7

After (106)”, insert the following:

“Qualified non-citizen” is defined in 8 U.S.C. 1641(b) and (c).

(108)

Page 20

Sections 1(107) through (111)

Lines 7, 10, 11, 16, and 22

Renumber these five (5) subsections by inserting “(110)”, “(111)”, “(112)”, “(113)”, and “(114)”, respectively, and by deleting “(107)”, “(108)”, “(109)”, “(110)”, and “(111)”, respectively.

Page 21

Sections 1(112) through (119)

Lines 6, 7, 9, 14, 16, 19, 21, and 23

Renumber these eight (8) subsections by inserting “(115)”, “(116)”, “(117)”, “(118)”, “(119)”, “(120)”, “(121)”, and “(122)”, respectively, and by deleting “(112)”, “(113)”, “(114)”, “(115)”, “(116)”, “(117)”, “(118)”, and “(119)”, respectively.

Page 22

Sections 1(120) through (128)

Lines 3, 6, 9, 10, 11, 13, 15, 17, and 19

Re-number these nine (9) subsections by inserting “(123)”, “(124)”, “(125)”, “(126)”, “(127)”, “(128)”, “(129)”, “(130)”, and “(131)”, respectively, and by deleting “(120)”, “(121)”, “(122)”, “(123)”, “(124)”, “(125)”, “(126)”, “(127)” and “(128)”, respectively.

Page 23

Sections 1(129) through (136)

Lines 1, 3, 4, 5, 8, 10, 11, and 17

Re-number these eight (8) subsections by inserting “(132)”, “(133)”, “(134)”, “(135)”, “(136)”, “(137)”, “(138)”, and “(139)”, respectively, and by deleting “(129)”, “(130)”, “(131)”, “(132)”, “(133)”, “(134)”, “(135)”, and “(136)”, respectively.

Page 24

Sections 1(137) through (140)

Lines 3, 8, 10, and 20

Re-number these four (4) subsections by inserting “(140)”, “(141)”, “(142)”, and “(143)”, respectively, and by deleting “(137)”, “(138)”, “(139)”, and “(140)”, respectively.

Page 25

Sections 1(141) through (146)

Lines 3, 10, 12, 17, 21, and 23

Re-number these five (5) subsections by inserting “(144)”, “(145)”, “(146)”, “(147)”, and “(148)”, respectively, and by deleting “(141)”, “(142)”, “(143)”, “(144)”, and “(145)”, respectively.

Page 25

Section 1(145) and (146)

Lines 22 and 23

After “appointment.”, insert a return and the following:

(149) “Valid immigrant status” is defined in:

(a) 8 U.S.C. 1101(a)(15); or

(b) 8 U.S.C. 1101(a)(17).

(150)

Delete “(146)”.

Page 26

Sections 1(147) and (148)

Lines 1 and 2

Re-number these two (2) subsections by inserting “(151)” and “(152)”, respectively, and by deleting “(147)” and “(148)”, respectively.